IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 32546 of 2004(Y)

PETITIONER:

K.ABDUL HAKEEM, KULAPPURAM,
CHAKKIDAVAZHI, ERANHIPALAM, KOZHIKODE DISTRICT.

BY ADV. SRI.E.NARAYANAN

RESPONDENTS:
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1. THE DISTROCT LABOUR OFFICER,
THE APPELLATE AUTHORITY, (BUILDING AND OTHER
CONSTRUCTION WORKERS WELFARE CESS RULES)
KOZHIKODE.

2. THE ASSESSMENT OFICER, BUILDING AND
OTHER CONSTRUCTION WORKS CESS ACT
(ALO GRADE 1) DISTRICT LABOUR OFFICE,
KOZHIKODE.

3. THE SPECIAL DEPUTY THAHASILDAR
(ARREARS COLLECTION), KOZHIKODE-4.

BY GOVERNMENT PLEADER SMT. SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF NOTICE DATED 5.1.2002

EXT.P2 TRUE COPY OF THE NOTICE DATED 25.1.2002

EXT.P 3 TRUE COPY OF THE REPLY TO EXT.P1 DATED NIL.

EXT.P4 TRUE COPY OF NOTICE DATED 13.8.2002

EXT.P5 TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 10.9.2002TO THE SECOND RESPONDENT.

EXT.P6 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 7.11.2002

EXT.P7 TRUE COPY OF THE ORDER DATED 12.12.2002

EXT.P8 TRUE COPY OF THE APPEAL MEMORANDUM DATED 25.1.2004

EXT.P9 TRUE COPY OF THE NOTICE DATED 1.9.2004

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 32546 OF 2004

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioner is challenging demand of cess and penalty under the Buildings and others Construction Workers Welfare Cess Act, 1996. Cess is payable under Section 3 of the Act at one per cent of the cost of construction. Petitioner has filed appeal against assessment on the ground that valuation is excessive. According to the petitioner, assessment is completed without complying with Rule 12 of the Rules. However, it is conceded that building is a flat complex consisting of four units with total plinth area of a little over 3000 sq.ft. Cess demanded is Rs. 17,690/- which shows that construction cost adopted is below Rs. 600/- per sq.ft. which during the period of construction is quite reasonable to the advantage of the petitioner. During hearing, this Court suggested to counsel for the petitioner to withdraw the challenge against demand so that this Court could consider waiver of penalty on condition of payment of interest under the Act for the belated payment. Counsel submitted that without instruction from

party, he cannot concede liability. In the circumstances, W.P. is disposed of with following directions. If petitioner remits balance cess with interest under Section 8 of the Act for the belated payment, and files memo before the first respondent withdrawing the appeal filed against final determination order determining the cess, penalty will stand cancelled and no penalty will be recovered from the petitioner. If petitioner does not remit the cess with interest, but wants to contest the liability, then there will be direction to the first respondent to hear the petitioner's appeal against assessment and penalty filed under Section 11 of the Act and dispose of the same within two months from now. In that event recovery of penalty will stand stayed for two months from now and thereafter recovery will be continued for the amount due under orders in appeal.

(C.N. RAMACHANDRAN NAIR)
Judge